

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service Competitive  
Contract 3 (MC2011-21)  
Negotiated Service Agreement

Docket No. CP2014-28

ORDER APPROVING ADDITIONAL INTERNATIONAL  
BUSINESS REPLY SERVICE 3 NEGOTIATED SERVICE AGREEMENT

(Issued February 27, 2014)

I. INTRODUCTION

On February 14, 2014, the Postal Service filed notice, pursuant to 39 C.F.R. § 3015.5 stating that it has entered into an additional International Business Reply Service Competitive Contract (IBRS) 3 negotiated service agreement (Agreement).<sup>1</sup> The Postal Service seeks to have the Agreement included within the existing IBRS 3 product on ground of functional equivalence to the baseline agreement filed in Docket

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<sup>1</sup> Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 14, 2014 (Notice).

Nos. MC2011-21 and CP2011-59.<sup>2</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

## II. POSTAL SERVICE'S POSITION

The Postal Service identifies the Agreement as the successor to, and with the same customer as, the agreement approved in Docket No. CP2013-50.<sup>3</sup> The Postal Service intends for the Agreement to take effect March 1, 2014, one day after expiration of the 2013 Agreement. Notice at 3. The Agreement will remain in effect for two calendar years unless terminated sooner pursuant to contractual terms. *Id.*, Attachment 1 at 4.

The Postal Service asserts that the Agreement fits within the Mail Classification Schedule (MCS) language for IBRS agreements appearing in Attachment A to Governors' Decision No. 08-24. Notice at 3. The Postal Service states that the referenced Governors' Decision establishes a pricing formula and classification, which ensure that each IBRS agreement meets the criteria of 39 U.S.C. § 3633 and related regulations, and that costs conform to a common description. *Id.* at 4.

The Postal Service asserts that the Agreement is functionally equivalent to the IBRS 3 baseline agreement because it shares similar cost and market characteristics with previously filed IBRS agreements. *Id.* The Postal Service states that the functional terms of the Agreement and the functional terms of the baseline agreement are the same, but acknowledges that other terms may vary. *Id.*

The Postal Service states that prices offered in the Agreement may differ from previous IBRS agreements due to factors such as volume or postage commitments, date of signing, and incorporation of updated costing information. *Id.* at 5. However,

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<sup>2</sup> See Docket Nos. MC2011-21 and CP2011-59, Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011 (2013 Agreement).

<sup>3</sup> See Docket No. CP2013-50, Order No. 1668, Order Approving New International Business Reply Service Competitive Contract 3 Agreement, February 25, 2013.

the Postal Service states these differences do not alter the Agreement's functional equivalency with the baseline agreement. *Id.* Moreover, the Postal Service states that because the Agreement incorporates the same cost attributes and methodology as the IBRS 3 baseline agreement, the Agreement's relevant characteristics and those of the IBRS 3 baseline agreement are similar, if not the same. *Id.*

The Postal Service identifies two differences between the baseline agreement and the Agreement: 1) an additional phrase in Article 15 stating that the Postal Service may be required to file information in connection with the Agreement in other Commission dockets; and 2) an additional Article 30 concerning Intellectual Property, Co-Branding, and Licensing. *Id.* The Postal Service does not consider these differences to affect either the fundamental service it is offering or the fundamental structure of the contract. *Id.*

### III. COMMENTS

The Public Representative filed comments on February 26, 2014.<sup>4</sup> No other comments were received. The Public Representative has reviewed the Agreement and accompanying financial model and he concludes that the Agreement is functionally equivalent to the baseline agreement and that the negotiated prices in the Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. PR Comments at 3. With respect to functional equivalence, the Public Representative has reviewed the differences the Postal Service identifies between the baseline agreement and the Agreement, agrees with the Postal Service's characterization of the differences as minor, and concludes that the Agreement is functionally equivalent to the baseline agreement. *Id.* With respect to 39 U.S.C. § 3633(a), the Public Representative concludes, based on a review of the

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<sup>4</sup> Public Representative Comments on the Postal Service Notice to File an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 26, 2014 (PR Comments).

financial model, that the Agreement should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a). *Id.*

#### IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to determine whether the Agreement: (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

*Functional equivalence.* The Commission's assessment of the functional equivalence of the Agreement leads it to conclude that the Agreement shares similar cost and market characteristics to the baseline agreement. The two revisions are similar to provisions the Commission has approved in other dockets. These minor differences do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement.

*Cost considerations.* The Commission reviews competitive products to ensure they meet the applicable requirements of 39 U.S.C. § 3633 and 39 C.F.R. §§ 3015.5 and 3015.7. The Commission has reviewed the financial analyses underlying the Agreement and the Public Representative's Comments. Based on the information provided, the Commission finds that the Agreement should cover its attributable costs (39 U.S.C. § 3633(a)(2)); not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); and have a positive effect on the contribution of competitive products to institutional costs (§ 3633(a)(3)). Thus, a preliminary review of the proposed Agreement indicates it is consistent with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633.

*Other considerations.* The Postal Service shall notify the Commission if the Agreement terminates earlier than described in Article 11. In addition, the Agreement, like previous IBRS competitive agreements, includes clauses addressing cost increases and contingent pricing which allow the Postal Service flexibility to change rates without

entering into a new agreement. The Commission addressed the implications of contingency pricing clauses in Order No. 178 (in Docket Nos. MC2009-14 and CP2009-20) and concluded that the Postal Service must file notice of rate changes occurring under such clauses pursuant to 39 C.F.R. § 3015.5 and provide a minimum of 15 days' notice.<sup>5</sup>

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2014-28 is included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product.
2. The Postal Service shall notify the Commission if the Agreement terminates earlier than described in Article 11.
3. The Postal Service shall file any price modifications based on cost increases or contingency price provisions in the Agreement with the Commission as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>5</sup> Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009 (Order No. 178).